

1 **UNITED STATES DISTRICT COURT**

2 **DISTRICT OF NEVADA**

3 JERMAINE HAMPTON,

4 Plaintiff

5 v.

6 STATE OF NEVADA, et al.,

7 Defendants

Case No.: 2:20-cv-00578-APG-DJA

**Order**

[ECF Nos. 25, 38, 40, 42]

8 Plaintiff Jermaine Hampton sues the State of Nevada, the City of Las Vegas, Las Vegas  
9 Metropolitan Police Department (LVMPD) officers T. Edwards and D. Lunt, and deputy district  
10 attorneys Sarah Overly and Stephanie Getter under 42 U.S.C. § 1983. Hampton alleges that in  
11 June 2019, he got in a verbal argument with his wife, and his wife left the apartment. About a  
12 half hour later, officer Lunt arrived and asked Hampton if the officers could come inside and do  
13 a visual check of the apartment. The officers did a sweep of the apartment and then left. About  
14 ten minutes later, Lunt returned and asked Hampton if he would step outside for further  
15 questioning. According to Hampton, when he stepped outside, two other officers who were  
16 hiding grabbed his arms, handcuffed him, and placed him in a police car. Hampton alleges he  
17 was handcuffed for three hours and he suffered a ruptured rotator cuff.

18 Hampton alleges Edwards did not adequately investigate the situation and arrested him  
19 for possessing a firearm based on his wife's uncorroborated allegations. He asserts this resulted  
20 in the judge in another case revoking his bail and sentencing him more harshly, even though  
21 Hampton was later found not guilty of the gun possession charge. He also contends that  
22 Edwards altered a search warrant for a mouth swab to obtain his DNA by changing the name on  
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1 the warrant, which was Jermaine Gardner, to his name (Jermaine Hampton). Edwards also  
2 allegedly altered the time on the telephonic search warrant.

3 Hampton alleges Overly and Getter continued to pursue criminal charges against him,  
4 threatened him with an enhanced sentence as a habitual offender, and opposed his motions to  
5 dismiss, suppress, and for judgment as a matter of law, even though they knew he did not possess  
6 the gun. He also contends that after the DNA results did not establish his DNA was on the gun,  
7 Overly and Getter offered him a plea deal to a lesser charge, rather than dismiss the case. When  
8 he rejected that offer, they prosecuted him through trial, and a jury acquitted him.

9 Overly and Getter moved to dismiss, arguing they are entitled to absolute prosecutorial  
10 immunity for the actions they took in prosecuting Hampton. Hampton thereafter moved to  
11 amend, which Magistrate Judge Albregts granted. ECF Nos. 33, 35. Judge Albregts ordered  
12 Hampton to “file and serve the amended complaint in accordance with Local Rule 15-1(b).” ECF  
13 No. 35 at 3. Hampton did not do so.<sup>1</sup> Hampton opposed the motion to dismiss on the ground  
14 that Overly and Getter stepped outside their roles as prosecutors by coaching testimony,  
15 vouching for credibility of witnesses at trial, vindictively prosecuting him, and failing to timely  
16 turn over the altered search warrant. He contends Overly and Getter either altered the search  
17 warrant themselves or requested Edwards to do so, and thereby acted as part of the investigation  
18 rather than as prosecutors.

19 In their reply, Overly and Getter note that Hampton had moved to amend and stated that  
20 their motion to dismiss would become moot if the court granted that motion. This statement is  
21 curious, given that Judge Albregts had already granted Hampton’s motion to amend.

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23<sup>1</sup> The amended complaint is located at ECF No. 33-1.

1        Thereafter, Hampton moved to amend again. ECF No. 38. He sought to add factual  
2 allegations against Overly and Getter that were not in his prior complaint. Specifically, the  
3 proposed amended complaint adds allegations that the prosecutors withheld the altered search  
4 warrant and either altered it themselves or directed Edwards to do so. ECF No. 38-1 at 18-20.

5        Edwards and Lunt moved to dismiss the claims against them and opposed the motion to  
6 amend. ECF Nos. 39, 40. Overly and Getter did not oppose the motion to amend, even though  
7 the only new allegations were directed at them.

8        Magistrate Judge Albregts recommended that I deny amendment because it would be  
9 futile, given the prosecutors' argument that they are entitled to immunity. ECF No. 42. Hampton  
10 thereafter filed yet another motion to amend, which Judge Albregts denied without prejudice  
11 pending my decision on his report and recommendation on the prior motion to amend. ECF Nos.  
12 44, 47. Hampton then objected to Judge Albregts' recommendation that I deny his earlier  
13 motion to amend. ECF No. 46. Hampton argues that Judge Albregts erroneously identified  
14 Edwards and Lunt's motion to dismiss as one being filed by Overly and Getter. Edwards and  
15 Lunt (but not Overly and Getter) respond that Judge Albregts correctly denied amendment  
16 because the proposed complaint includes futile claims.

17        Technically, Overly and Getter's motion to dismiss is moot because Judge Albregts  
18 subsequently granted Hampton's motion to amend, making ECF No. 33-1 the operative  
19 complaint. But the parties appear to be confused about which complaint is operative. And when  
20 Hampton moved to amend only to add new allegations against Overly and Getter, they did not  
21 oppose and did not argue that amendment would be futile as to them. To clean up the docket and  
22 ensure everyone is working on the same pleading, and to allow pro se litigant Hampton the  
23 opportunity to fully state his claims against Overly and Getter, I grant Hampton's motion to

1 amend the complaint. Because the defendants' motions to dismiss were directed at the prior  
2 complaint(s), I deny them as moot, without prejudice to file motions to dismiss directed at the  
3 operative complaint.

4 I THEREFORE ORDER that Magistrate Judge Albregts' report and recommendation  
5 **(ECF No. 42) is modified** and plaintiff Jermaine Hampton's motion to amend **(ECF No. 38) is**  
6 **GRANTED.**

7 I FURTHER ORDER the clerk of court to detach and file separately ECF No. 38-1,  
8 which is now the operative amended complaint in this matter.

9 I FURTHER ORDER that defendants Stephanie Getter and Sarah Overly's motion to  
10 dismiss **(ECF No. 25) is DENIED as moot**, without prejudice to filing a motion to dismiss  
11 directed at the now-operative complaint.

12 I FURTHER ORDER that defendants T. Edwards and D. Lunt's motion to dismiss **(ECF**  
13 **No. 40) is DENIED as moot**, without prejudice to filing a motion to dismiss directed at the now-  
14 operative complaint.

15 DATED this 17th day of March, 2021.

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17 ANDREW P. GORDON  
18 UNITED STATES DISTRICT JUDGE  
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